SUPREME COURT U. S.

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No. 143

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

BRUNS, NORDEMAN & CO.,
Petitioner,

vs.

AMERICAN NATIONAL BANK AND TRUST COMPANY,
Respondent,

AND

THE EXCHANGE CORP., MAURICE BENJAMIN AND EDWARD LEVITT,
Defendants.

BRIEF IN OPPOSITION TO CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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QUESTION PRESENTED.

The sole question presented by the petition is whether the mandatory venue requirement of Section 94 of the National Bank Act (12 U. S. C. § 94), limiting the venue of actions against national banks to the districts wherein such banks are established or located, has been impliedly repealed by the Securities Acts [15 U. S. C. § 77v(a) and 15 U. S. C. § 78aa].

THE PETITION SHOULD BE DENIED.

The decision below is clearly correct and in accord with the prior decisions of this Court and of all other Circuit Courts of Appeals construing Section 94 of the National Bank Act. There is no conflict between Circuits, no question of special or recurring importance, and no other occasion to warrant review by this Court. Petitioner's plaint should be addressed to Congress.

I. THE COURTS BELOW PROPERLY APPLIED THE MANDATORY VENUE REQUIREMENT OF THE NATIONAL BANK ACT.

As both the District Court and the Second Circuit recognized below, the decided cases have repeatedly held that Section 94 of the National Bank Act is mandatory and requires that all transitory actions be brought in the district in which the national bank is established or located. *Mercantile Nat'l Bank* v. *Langdeau,* 371 U. S. 555 (1962); *Michigan Nat'l Bank* v. *Robertson,* 372 U. S. 591 (1962); *General Electric Credit Corp.* v. *James Talcott, Inc.,* 271 F. Supp. 699 (S. D. N. Y. 1966); *Cope* v. *Anderson,* 331 U. S. 461 (1946); *Bank of America* v. *Whitney Central Nat'l Bank,* 261 U. S. 171 (1923); *First Nat'l Bank of Charlotte* v. *Morgan,* 132 U. S. 141, 145 (1889); *Ruffum* v. *Chase Nat'l Bank,* 192 F. 2d 58 (7th Cir. 1951), *cert. denied,* 342 U. S. 944 (1952); *Leonardi* v. *Chase Nat'l Bank,* 81 F. 2d 19 (2d Cir.), *cert. denied,* 398 U. S. 677 (1936); *Nat'l Union Fire Ins. Co.* v. *Lippert Bros. Inc.,* 233 F. Supp. 650 (D. Neb. 1964); *International Refugee Organization* v. *Bank of America,* 86 F. Supp. 884 (S. D. N. Y. 1949); *Schmitt* v. *Tobin,* 15 F. Supp. 35 (D. Neb. 1935); *Cadle* v. *Tracey,* 4 Fed. Cas. 967, No. 2279 (C. C. S. D. N. Y. 1873).

All but one of the courts that have considered Section

94 in light of the special and different venue provisions of the Securities Acts [15 U. S. C. §§ 77v(a) and 78aa] have rejected petitioner's strained notion of "implied repeal" of Section 94. *E.g., General Electric Credit Corp.* v. *James Talcott, Inc.*, 271 F. Supp. 699 (S. D. N. Y. 1966); *Berman* v. *Thomson and the First Nat'l Bank of Boston*, No. Dist. Ill. No. 65-C-2051 (unreported); *Wyndham Associates* v. *Bintliff*, 67 Civ. 2611 and *Friedman* v. *Bintliff*, 67 Civ. 3661 (S. D. N. Y. Nov. 8, 1967). The sole case to the contrary is *Levin* v. *Western Sugar Co.*, 274 F. Supp. 974 (D. N. J. 1967), which we submit is patently erroneous.

This Court has held on numerous occasions that, in the absence of express legislative intent to the contrary, statutes dealing with a narrow and specific problem will be held to prevail over more general provisions of another statute. *E.g., Kepner* v. *United States*, 195 U. S. 100, 125 (1904); *Rodgers* v. *United States*, 185 U. S. 83, 87-88 (1902); *Townsend* v. *Little*, 109 U. S. 504, 512 (1883). And, this Court has specifically held that where particular venue provisions have been enacted by Congress, the broader language of a general venue statute does not supersede the specific legislation even though it may be literally applicable. *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561 (1942); *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222 (1957).

Thus, even if there were no legislative history on the subject, we believe it plain that the overwhelming weight of authority supports the lower courts' determination that the specific venue provisions of Section 94 of the National Bank Act required dismissal of respondent from the suit.

II. SECTION 94 HAS NOT BEEN REPEALED BY THE VENUE PROVISIONS OF THE SECURITIES ACTS.

There is no evidence whatsoever of any congressional intent to repeal Section 94 of the National Bank Act either expressly or impliedly. In 1959 Congress passed 25 amendments to the National Bank Act to "clarify or eliminate ambiguities . . . [and] to repeal certain laws which have become obsolete." (1959 U. S. Code, Cong. Admin. News at p. 2232.) Signally, Congress did not see fit to modify or repeal the venue provisions of Section 94. Any argument that Congress has not paid careful and continuing attention to the specific needs of national banks in the context of other national legislation flies in the face of clear-cut congressional history. As this Court recently recognized in *First Agricultural Nat'l Bank of Berkshire County* v. *State Tax Commission*, 20 L. Ed. 2d 1138, 1141, 1143 (1968), concerning the vitality of legislation affecting national banks:

> ". . . Congress has been far from reluctant to pass legislation in the banking field. There are important committees on banking and currency in both Houses which continually monitor banking affairs and propose new legislation when changes are felt to be needed."
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> * * * * *
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> ". . . Now this Court is asked to change what legislative history and prior decisions have established is the precise meaning of an Act of Congress. This we cannot do. For, as we pointed out above, the banking field has traditionally been an area of particular congressional concern marked by responsive legislation to new problems."

Petitioner's reliance on *Silver* v. *New York Stock Exchange*, 373 U. S. 341 (1962) is wholly misplaced. There this Court specifically held that the Securities Exchange Act was *not* so broad or pervasive as to constitute an im-

plied repealer of the antitrust laws and a consequent exemption for the New York Stock Exchange from those laws. Indeed, this Court was at pains to note in *Silver* that " '[i]t is a cardinal principle of construction that repeals by implication are not favored' " (*United States* v. *Borden Co.*, 308 U. S. 188, 198); the Court went on to hold that (373 U. S. at 357):

> "Repeal is to be regarded as implied only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary."

Moreover, we submit that no issue of "workability" of the Securities Acts is raised by the venue provision of the National Bank Act; nor do we believe that there is a necessary conflict between those statutes as they apply to national banks. Judge Tenney in *General Electric Credit, supra,* soundly rejected any such argument of necessary conflict and decided that, in any event, any modification of the Bank Act in light of the Securities laws was a matter for congressional determination (271 F. Supp. at 708):

> ". . . Whether valid argument exists for amendment of either the National Bank Act or the Securities Exchange Act in the light of the expanding activities of national banks is a matter for Congress to determine. Certainly, in the present posture of the record, I cannot conclude that such would be desirable, even were it within my province to so determine. Clearly both acts can exist together and their co-existence for over thirty years does not appear to have impeded in any way the enforcement of the Securities Exchange Act."

And see *Mercantile Nat'l Bank* v. *Langdeau,* 371 U. S. 555, 565-67 (1962).

CONCLUSION.

The petition should be denied.

Respectfully submitted,

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